

STATE OF MICHIGAN
COURT OF APPEALS

JEANNIE L. COLLINS, Personal Representative
of the Estate of RICHARD E. COLLINS,
Deceased, and KIRBY TOTTINGHAM,

UNPUBLISHED
March 22, 2005

Plaintiff-Appellants,

v

MAES CORPORATION, d/b/a AUTO IMAGES
OF JACKSON, ERIC MAES, and APRIL MAES,

No. 251795
Jackson Circuit Court
LC No. 02-002521-NO

Defendant-Appellees.

Before: Hoekstra, P.J., and Neff and Schuette, JJ.

NEFF, J., (*concurring*).

While I agree with the majority's conclusion that there is no statutory duty owing plaintiffs and that plaintiffs cannot establish the necessary relationship with defendants to prove the common law duty element of their negligence cause of action, I take issue with the reliance on *Buczowski v McKay*, 441 Mich 96; 490 NW2d 330 (1992). The facts of *Buczowski* differ significantly from the facts of this case. In *Buczowski*, the item in question was a shotgun shell fired by the purchaser who had been drinking all day and which injured plaintiff when the shell ricocheted off a parked vehicle. The element of foreseeability was highly attenuated, as was whether its use would be in violation of the law. In the current case, defendants knew full well that Mahan intended to use and did use the vehicle with illegal tinting on the windows that defendants installed. That is, in this case, unlike in *Buczowski*, the product was legal to sell, but it was not legal to use in the manner defendants were *aware* it was to be used. Moreover, it seems clear that a safety hazard was created when defendants applied the tinting to Mahan's vehicle.

I agree that the circumstances of this case require legislative attention. To allow the installer to escape responsibility for the installation of a hazardous product with the full knowledge that its use will be illegal and dangerous to the public is logically inconsistent. The statute bears review and revision.

/s/ Janet T. Neff